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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,364	10/20/2003	Tatsumi Kumada	4041J-000792	4386

27572 7590 12/26/2006

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EXAMINER	
FORD, JOHN K	
ART UNIT	PAPER NUMBER
3744	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/26/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/689,364	KUMADA ET AL.	
	Examiner	Art Unit	
	John K. Ford	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 10/9/06

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1,3-10 is/are pending in the application.

4a) Of the above claim(s) 3,5-7 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1,4,8-10 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 7/25/06
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's response of October 9, 2006 has been studied carefully. Another piece of highly relevant prior art of Denso origin (JP 2001-171327) has materialized apparently as a consequence of the examination currently taking place in the Japanese Patent Office. Applicant has provided it without a translation. The USPTO has a very primitive ability to search the Japanese database that is limited to keyword searching of only the Abstract, which illustrates in this case why the US examiner did not find this reference in his original search of the claimed subject matter. That is the primary reason that the examiner has repeatedly requested prior art from applicants as in the first full paragraph of the previous office action mailed 05/01/2006.

The Examiner has read and understood applicant's argument with respect to the combined teachings of Kawai '615/Fusco '178. The argument is seen to apply to independent claim 1 and 8, but not independent claim 4, because the feature argued to be patentable and not disclosed in Fusco '718 is not claimed in claim 4.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Kawai '615 and Fusco '718.

In Figures 47-53 of Kawai, a dual zone air conditioner substantially identical to the one disclosed here is shown. This disclosure anticipates everything claimed in claim 1 down to, but not including, the last two paragraphs of claim 1. Lacking in Figures 47-53 is an occupant detector and adjustment means for one of the temperature measurement, preset temperature or target air temperature. Fusco teaches in a dual zone system in steps 106 and 108, controlling all unoccupied zones to optimize comfort in the occupied zone.

Applicant admits that Fusco explicitly teaches adjusting the preset temperature of the unoccupied seat to that of the occupied seat. See the last sentence on page 12 of applicant's October 9, 2006 response, incorporated here by reference.

To have modified Kawai '615 with the admission made in the last sentence on page 12 of applicant's October 9, 2006 response, incorporated here by reference, to improve comfort would have been obvious to one of ordinary skill in the art.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 8, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In light of applicant's argument of October 9, 2006 regarding the combined teachings of Kawai '615/Fusco '718, it is apparent that applicant has ~~very~~ more narrowly

construed "temperature measurement" as it occurs in the last paragraph of claims 1 and 8 than the examiner originally did. The reason the examiner construed it more broadly is that the narrow definition that applicant now urges is that the "adjusting" in the penultimate paragraph occurs to one of three possible measured values (temperature measurement, preset temperature and target discharge temperature) not just temperature measurement and applicant's narrow interpretation conflicted with the more expansive interpretation. In light of applicant's argument of October 9, 2006 regarding the combined teachings of Kawai '615/Fusco '718, it is apparent that the "adjusting" is now intended to be limited to only temperature measurement. There is an inherent inconsistency between the penultimate and final paragraphs wherein one claim limitation suggests that the "adjusting" limitation is more broadly recited than another. Be consistent and be definite regarding which interpretation is correct.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4, 8, 9 and 10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 2001-171237 alone or in combination with Kawai '615 and, optionally, Fusco '718.

JP '237 has been provided without a translation. A copy of the Japanese examination report on the other hand has been provided with a translation, making it apparent that translations are readily available to applicants/assignee. The description from the translated Japanese examination report is incorporated here by reference. It appears to teach everything that applicant has claimed. If it does not, please explain why it doesn't since applicants are fluent in Japanese.

In Figures 47-53 of Kawai, a dual zone air conditioner substantially identical to the one disclosed here is shown. This disclosure anticipates everything claimed in claim 1 down to, but not including, the last two paragraphs of claim 1. Lacking in Figures 47-53 is an occupant detector and adjustment means for one of the temperature measurement, preset temperature or target air temperature. Fusco teaches in a dual zone system in steps 106 and 108, controlling all unoccupied zones to optimize comfort in the occupied zone.

JP '327 teaches (to the limited extent that the examiner can understand it) using measured values for the occupied seat in controlling the unoccupied seat thereby making the occupant more comfortable and saving air-conditioning power. To have

done this in Kawai '615 (i.e. used the measured values for the occupied seat in controlling the unoccupied seat) to advantageously make the occupant more comfortable and save air conditioning power would have been obvious. If necessary, motivation is also provided by Fusco, namely optimization.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Ford whose telephone number is 571-272-4911. The examiner can normally be reached on Mon.-Fri. 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.